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WATERS v. TREFOURET et al.

Jan. 12, 1915.

[83 S. E. 1078.]

1. Wills (§ 472*)—Construction—Relative Position of Provisions.

—The rule that, when provisions are irreconcilable, the latter must prevail, will only be adopted to avoid the failure of both for uncertainty, and will never be permitted to defeat the intention of the testatrix manifested by the whole will.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 990, 991; Dec. Dig. § 472.* 13 Va.-W. Va. Enc. Dig. 784; 15 Va.-W. Va. Enc. Dig. 1078.]

2. Wills (§ 612*)—Construction—Annuities.—Where testatrix gave her property to her brothers in trust to pay annuities to two persons during their natural lives, and the rest of the income to the mother of testatrix, and provided that, after the death of the mother, the whole property should become the absolute property of her brothers without condition, the last provision did not nullify the provisions for the annuities, but the brothers take the property subject to the payment of the annuities.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1387-1392, 1608; Dec. Dig. § 612.* 13 Va.-W. Va. Enc. Dig. 784; 15 Va.-W. Va. Enc. Dig. 1078.]

Appeal from Circuit Court, Albemarle County.

Suit by William D. Waters, executor, against Alfredine Jeanne Trefouret and others to procure the construction of a will. From a decree construing the will in favor of defendants, complainant appeals. Affirmed.

Perkins, Perkins & Walker, of Charlottesville, for appellant. *Duke & Duke*, of Charlottesville, *Jay & Candler*, of New York City, and *Hanckel & Hanckel*, of Charlottesville, for appellees.

ANDERSON v. UNION BANK OF RICHMOND et al.

Jan. 12, 1915.

[83 S. E. 1080.]

1. Time (§ 9*)—Computation—Including Last Day—Notice.—Under Code 1904, § 3211, providing for judgment on motion after 15 days' notice which shall be returned to the clerk's office within 5 days after service, the day of service is to be counted in computing the 15 days' notice.

[Ed. Note.—For other cases, see Time, Cent. Dig. §§ 11-32; Dec. Dig. § 9.*]

2. Pledges (§ 58*)—Actions—Defense.—Where notes were pledged

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

as collateral, the pledgee need not, as a condition to suing on the collateral, attempt to dispose of such notes.

[Ed. Note.—For other cases, see Pledges, Cent. Dig. §§ 186-194; Dec. Dig. § 58.*]

3. Discovery (§ 22*)—Pleading—Answer.—A complete answer to a bill which prayed discovery must be accepted as true unless overcome by other evidence.

[Ed. Note.—For other cases, see Discovery, Cent. Dig. §§ 29-34; Dec. Dig. § 22.*]

4. Bills and Notes (§ 357*)—Actions—“Holder in Due Course.”—Notes given for the purchase price of land were untainted by fraud. Thereafter the vendor and purchaser agreed that the contract should be annulled and the notes returned, the land to be reconveyed. The pledgee made reconveyance, but the vendor fraudulently pledged the notes as collateral. Code 1904, § 2141a, subsec. 52, provides that a “holder in due course” is one who has in good faith taken an instrument, complete and regular on its face, not yet dishonored or overdue. Held, that the pledgee of the collateral was a holder in due course, and hence under subsection 57 took the notes free from any defenses available as against the vendor.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 909-912, 961; Dec. Dig. § 357.*]

For other definitions, see Words and Phrases, First and Second Series, Holder in Due Course.]

5. Bills and Notes (§ 357*)—Pledges of Collateral—Effect.—The pledgee of notes as collateral, being the owner and entitled to enforce them as though the rights of no other person intervened, may be a bona fide purchaser of the notes.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 909-912; 961; Dec. Dig. § 357.*]

Error to Corporation Court of Lynchburg.

Appeal from Law and Equity Court of City of Richmond.

Suit by the Union Bank of Richmond and others against William M. Anderson, who filed a cross-bill. From a decree for plaintiffs, defendant appeals. Affirmed.

O'Flaherty, Fulton & Byrd, of Richmond, for appellant.
Willoughby Newton, Jr., of Richmond, for appellees.

VIRGINIAN RY. CO. v. ECHOLS.

Jan. 12, 1915.

[83 S. E. 1082.]

1. Injunction (§ 133*)—Mandatory Injunction—Hearing.—A mandatory injunction to compel a railroad company, which had changed

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.